

FIRST REGULAR SESSION

HOUSE BILL NO. 458

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SUTHERLAND (Sponsor), HUNTER, PARSON, BIVINS,
WILSON (119), SATER, DOUGHERTY AND ROBB (Co-sponsors).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1083L.01I

AN ACT

To repeal sections 147.010 and 148.064, RSMo, and to enact in lieu thereof two new sections relating to annual franchise taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 147.010 and 148.064, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 147.010 and 148.064, to read as follows:

147.010. 1. [For the transitional year defined in subsection 4 of this section and each
2 taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation
3 organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state
4 shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to
5 the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding
6 shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or
7 if the outstanding shares of such corporation or any part thereof consist of shares without par
8 value, then, in that event, for the purpose contained in this section, such shares shall be
9 considered as having a value of five dollars per share unless the actual value of such shares
10 exceeds five dollars per share, in which case the tax shall be levied and collected on the actual
11 value and the surplus if the actual value and the surplus exceed two hundred thousand dollars.
12 If such corporation employs a part of its outstanding shares in business in another state or
13 country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one
14 percent of its outstanding shares and surplus employed in this state if its outstanding shares and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 surplus employed in this state two hundred thousand dollars, and for the purposes of sections
16 147.010 to 147.120, such corporation shall be deemed to have employed in this state that
17 proportion of its entire outstanding shares and surplus that its property and assets employed in
18 this state bears to all its property and assets wherever located. A foreign corporation engaged
19 in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter
20 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares
21 and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall
22 state that fact on the annual report form prescribed by the secretary of state.] For all taxable
23 years beginning on or after January 1, 2000, **but ending on or before December 31, 2007**, the
24 annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding
25 shares and surplus if the outstanding shares and surplus exceed one million dollars. Any
26 corporation whose outstanding shares and surplus do not exceed one million dollars shall state
27 that fact on the annual report form prescribed by the director of revenue. **For taxable years**
28 **beginning on or after January 1, 2008, the annual franchise tax shall be equal to the**
29 **percentage rate prescribed in this subsection for the corresponding taxable year of the**
30 **corporation's outstanding shares and surplus if the outstanding shares and surplus exceed**
31 **the corresponding minimum threshold amount prescribed as follows:**

32 (1) For tax year 2008, the rate shall be one-thirtieth of one percent and the
33 threshold amount shall be two million dollars;

34 (2) For tax year 2009, the rate shall be one-thirtieth of one percent and the
35 threshold amount shall be four million dollars;

36 (3) For tax year 2010, the rate shall be one-fiftieth of one percent and the threshold
37 amount shall be five million dollars;

38 (4) For tax year 2011, the rate shall be one-eightieth of one percent and the
39 threshold amount shall be six million dollars; and

40 (5) For tax years beginning on or after January 1, 2012, no annual franchise tax
41 shall be imposed under this section.

42 2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit,
43 nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express
44 companies, which now pay an annual tax on their gross receipts in this state, nor to insurance
45 companies, which pay an annual tax on their premium receipts in this state, nor to state, district,
46 county, town and farmers' mutual companies now organized or that may be hereafter organized
47 pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning,
48 windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the
49 purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance
50 corporation not having shares, nor to a company or association organized to transact business of

51 life or accident insurance on the assessment plan for the purpose of mutual protection and benefit
52 to its members and the payment of stipulated sums of moneys to the family, heirs, executors,
53 administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety,
54 liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature
55 coming within the provisions of section 147.050 and doing business in this state, nor to savings
56 and loan associations and domestic and foreign regulated investment companies as defined by
57 Section 170 of the Act of Congress commonly known as the "Revenue Act of 1942", nor to
58 electric and telephone corporations organized pursuant to chapter 351, RSMo, and chapter 392,
59 RSMo, prior to January 1, 1980, which have been declared tax exempt organizations pursuant
60 to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after
61 December 31, 1986, to banking institutions subject to the annual franchise tax imposed by
62 sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the
63 individual depositor left for safekeeping and shall not be considered in computing the amount
64 of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

65 3. A corporation's "taxable year" for purposes of sections 147.010 to 147.120 shall be
66 its taxable year as provided in section 143.271, RSMo.

67 4. A corporation's "transitional year" for the purposes of sections 147.010 to 147.120
68 shall be its taxable year which includes parts of each of the years 1979 and 1980.

69 5. The franchise tax payable for a corporation's transitional year shall be computed by
70 multiplying the amount otherwise due for that year by a fraction, the numerator of which is the
71 number of months between January 1, 1980, and the end of the taxable year and the denominator
72 of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as
73 provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations
74 prescribed by the director of revenue.

75 6. All franchise reports and franchise taxes shall be returned to the director of revenue.
76 All checks and drafts remitted for payment of franchise taxes shall be made payable to the
77 director of revenue.

78 7. Pursuant to section 32.057, RSMo, the director of revenue shall maintain the
79 confidentiality of all franchise tax reports returned to the director.

80 8. The director of the department of revenue shall honor all existing agreements between
81 taxpayers and the director of the department of revenue.

148.064. 1. Notwithstanding any law to the contrary, this section shall determine the
2 ordering and limit reductions for certain taxes and tax credits which may be used as credits
3 against various taxes paid or payable by banking institutions. Except as adjusted in subsections
4 2, 3 and 6 of this section, such credits shall be applied in the following order until used against:

5 (1) The tax on banks determined under subdivision (2) of subsection 2 of section
6 148.030;

7 (2) The tax on banks determined under subdivision (1) of subsection 2 of section
8 148.030;

9 (3) The state income tax in section 143.071, RSMo.

10 2. The tax credits permitted against taxes payable pursuant to subdivision (2) of
11 subsection 2 of section 148.030 shall be utilized first and include taxes referenced in
12 subdivisions (2) and (3) of subsection 1 of this section, which shall be determined without
13 reduction for any tax credits identified in subsection 5 of this section which are used to reduce
14 such taxes. Where a banking institution subject to this section joins in the filing of a
15 consolidated state income tax return under chapter 143, RSMo, the credit allowed under this
16 section for state income taxes payable under chapter 143, RSMo, shall be determined based upon
17 the consolidated state income tax liability of the group and allocated to a banking institution,
18 without reduction for any tax credits identified in subsection 5 of this section which are used to
19 reduce such consolidated taxes as provided in chapter 143, RSMo.

20 3. The taxes referenced in subdivisions (2) and (3) of subsection 1 of this section may
21 be reduced by the tax credits in subsection 5 of this section without regard to any adjustments
22 in subsection 2 of this section.

23 4. To the extent that certain tax credits which the taxpayer is entitled to claim are
24 transferable, such transferability may include transfers among such taxpayers who are members
25 of a single consolidated income tax return, and this subsection shall not impact other tax credit
26 transferability.

27 5. For the purpose of this section, the tax credits referred to in subsections 2 and 3 shall
28 include tax credits available for economic development, low-income housing and neighborhood
29 assistance which the taxpayer is entitled to claim for the year, including by way of example and
30 not of limitation, tax credits pursuant to the following sections: section 32.115, RSMo, section
31 100.286, RSMo, and sections 135.110, 135.225, 135.352 and 135.403, RSMo.

32 6. For tax returns filed on or after January 1, 2001, including returns based on income
33 in the year 2000, and after, **including tax returns filed on or after January 1, 2012, including**
34 **returns based on income in the year 2012, but ending thereafter**, a banking institution shall
35 be entitled to an annual tax credit equal to one-sixtieth of one percent of its outstanding shares
36 and surplus employed in this state if the outstanding shares and surplus exceed one million
37 dollars, determined in the same manner as in section 147.010, RSMo. This tax credit shall be
38 taken as a dollar-for-dollar credit against the bank tax provided for in subdivision (2) of
39 subsection 2 of section 148.030; if such bank tax was already reduced to zero by other credits,
40 then against the corporate income tax provided for in chapter 143, RSMo.

41 7. [In the event the corporation franchise tax in chapter 147, RSMo, is repealed by the
42 general assembly, there shall also be a reduction in the taxation of banks as follows: in lieu of
43 the loss of the corporation franchise tax credit reduction in subdivision (1) of subsection 2 of
44 section 148.030, the bank shall receive a tax credit equal to one and one-half percent of net
45 income as determined in this chapter. This subsection shall take effect at the same time the
46 corporation franchise tax in chapter 147, RSMo, is repealed.] **In addition to the franchise tax**
47 **actually paid, there shall be added to such amount the amount in subsection 6 of this**
48 **section and the following, which when totaled with the actual franchise tax paid shall be**
49 **the franchise tax for purposes of the credits allowable under chapter 148 against**
50 **subdivision (2) of subsection 2 of section 148.030 or chapter 143, RSMo, as follows:**

51 (1) For tax returns filed on or after January 1, 2009, including returns based on
52 income in the year 2008, a banking institution shall be entitled to an additional annual tax
53 credit equal to one-thirtieth of one percent of its outstanding share and surplus employed
54 in this state, if the outstanding shares exceed one million dollars and are less than two
55 million dollars (determined in the same manner as in section 147.010, RSMo, as in effect
56 for tax years ending on or before December 31, 2007);

57 (2) For tax returns filed on or after January 1, 2010, including returns based on
58 income in the year 2009, a banking institution shall be entitled to an annual tax credit
59 equal to one-thirtieth of one percent of its outstanding share and surplus employed in this
60 state, if the outstanding shares exceed one million dollars and are less than four million
61 dollars (determined in the same manner as in section 147.010, RSMo, as in effect for tax
62 years ending on or before December 31, 2007);

63 (3) For tax returns filed on or after January 1, 2011, including returns based on
64 income in the year 2010, and after, a banking institution shall be entitled to an annual tax
65 credit equal to:

66 (a) One-seventy-fifth of one percent of its outstanding share and surplus employed
67 in this state, if the outstanding shares are five million dollars or more (determined in the
68 same manner as in section 147.010, RSMo, as in effect for tax years ending on or before
69 December 31, 2007); or

70 (b) One-thirtieth of one percent of its outstanding share and surplus employed in
71 this state, if the outstanding shares exceed one million dollars and less than five million
72 dollars (determined in the same manner as in section 147.010, RSMo, as in effect for tax
73 years ending on or before December 31, 2007);

74 (4) For tax returns filed on or after January 1, 2012, including returns based on
75 income in the year 2011, and after, a banking institution shall be entitled to an annual tax
76 credit equal to:

77 (a) One-forty-eighth of one percent of its outstanding share and surplus employed
78 in this state, if the outstanding shares are six million dollars or more, (determined in the
79 same manner as in section 147.010, RSMo, as in effect for tax years ending on or before
80 December 31, 2007); or

81 (b) One-thirtieth of one percent of its outstanding share and surplus employed in
82 this state, if the outstanding shares exceed one million dollars and are less than six million
83 dollars (determined in the same manner as in section 147.010, RSMo, as in effect for tax
84 years ending on or before December 31, 2007);

85 (5) For tax returns filed on or after January 1, 2013, including returns based on
86 income in the year 2012, and after, a banking institution shall be entitled to an annual tax
87 credit equal to one-twentieth of one percent of its outstanding share and surplus employed
88 in this state, if the outstanding shares exceed one million dollars (determined in the same
89 manner as in section 147.010, RSMo, as in effect for tax years ending before December 31,
90 2007).

91 8. An S corporation bank or bank holding company that otherwise qualifies to distribute
92 tax credits to its shareholders shall pass through any tax credits referred to in subsection 5 of this
93 section to its shareholders as otherwise provided for in subsection 9 of section 143.471, RSMo,
94 with no reductions or limitations resulting from the transfer through such S corporation, and on
95 the same terms originally made available to the original taxpayer, subject to any original dollar
96 or percentage limitations on such credits, and when such S corporation is the original taxpayer,
97 treating such S corporation as having not elected Subchapter S status.

98 9. Notwithstanding any law to the contrary, in the event the corporation franchise tax in
99 chapter 147, RSMo, is **phased out or** repealed by the general assembly, [after such] **in the**
100 **course of such phase out and** repeal all Missouri taxes of any nature and type imposed directly
101 or used as a tax credit against the bank's taxes shall be passed through to the S corporation bank
102 or bank holding company shareholder in the form otherwise permitted by law, except for the
103 following:

104 (1) Credits for taxes on real estate and tangible personal property owned by the bank and
105 held for lease or rental to others;

106 (2) Contributions paid pursuant to the unemployment compensation tax law of Missouri;
107 or

108 (3) State and local sales and use taxes collected by the bank on its sales of tangible
109 personal property and the services enumerated in chapter 144, RSMo.

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